

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

San Jose Division

CHAPTER 13 CALENDAR PROCEDURES

Effective August 1, 2011

INTRODUCTION

These procedures are being established to improve the processing of chapter 13 cases in the San Jose Division and are intended (1) to facilitate the timely resolution of Chapter 13 cases, (2) to reduce time spent by counsel and the court on Chapter 13 cases, and (3) to provide access to the court for parties who need judicial intervention. In general, these procedures provide that Chapter 13 cases ready for confirmation will be confirmed expeditiously. Debtor(s) whose cases require further work will have time to complete that work and will have judicial assistance when appropriate. Cases not eligible for Chapter 13 or not making appropriate progress in Chapter 13 will be subject to dismissal.

CHAPTER 13 UNCONTESTED CONFIRMATION CALENDAR

When a Chapter 13 case is filed, the § 341(a) notice will include the date and time of the confirmation hearing and will state that the deadline for objections to a Chapter 13 plan is the same date as the first set § 341(a) meeting (*see* B.L.R. 3015-1(b)(3)). The confirmation hearing will be set on a Chapter 13 Uncontested Confirmation Calendar (“Uncontested Confirmation Calendar”). Absent timely objection and upon finding that the requirements of § 1325(a) are satisfied, the court will confirm the plan at the confirmation hearing. Cases will be considered ready for confirmation when (1) the § 341(a) meeting of creditors has concluded; (2) no objections to confirmation have been filed, or such objections have been resolved or withdrawn without judicial intervention; (3)

payments under the proposed plan are current; and (4) there are no other unresolved deficiencies.

**CASES NOT READY FOR CONFIRMATION:
PROCEDURES AND THE TRUSTEE'S PENDING LIST**

For cases that are not ready for confirmation, ten (10) days before the date originally set for confirmation, the Trustee shall file a Statement of Non-Readiness for Confirmation, which will place the case on the Trustee's Pending List ("TPL"). When the Trustee docket the Statement of Non-Readiness for Confirmation, the court's ECF system will automatically generate these notices:

1. A text entry reporting that (1) the case has been added to the Trustee's Pending List, and (2) parties in interest need not attend the first date set for the confirmation hearing, the plan will not be confirmed at that time, and the case will be taken off calendar at the hearing;
2. A Notice of Electronic Filing (the "NEF") notifying ECF Registered Users of the information in paragraph 1.

The NEF will provide instructions for restoring a case to the confirmation calendar. A case can be restored to the confirmation calendar as follows: (1) the Trustee may file a Statement of Resolution, placing the matter back on the Uncontested Confirmation Calendar, or (2) a party in interest (debtor(s) or other party in interest) may file a Notice of Hearing, placing the case on a Chapter 13 Contested Confirmation Calendar in conformity with the procedures set forth below; and

3. A written notice of the foregoing information to pro se debtor(s) and non-ECF Registered Users.

At the scheduled confirmation hearing, the court will announce the case has been placed on the TPL.

All cases on the TPL will be identified on a list which will be posted on the court's website. Cases will remain on the TPL until confirmation, dismissal, or conversion.

It will be the Trustee's duty to monitor and track the progress of the cases on the TPL. While cases are on the TPL, the parties should meet and confer and work toward resolution of the cases. The goal is to ensure that every case capable of being confirmed is returned to the Uncontested Confirmation Calendar as soon as possible.

RESTORING CASES TO UNCONTESTED CONFIRMATION CALENDAR

The Trustee should recommend confirmation when all deficiencies have been cured, outstanding objections have been resolved, and payments are current. When this occurs, the Trustee shall file a Trustee's Statement of Resolution. The court will generate and serve a Notice of Hearing, restoring the confirmation hearing to the next available Uncontested Confirmation Calendar. The court will give notice to the debtor(s), debtor(s)' counsel, the Trustee, other parties that have objected to the plan, and parties requesting special notice. The Notice of Hearing will automatically generate a Notice of Electronic Filing alerting ECF Registered Users of the restored confirmation hearing and a written notice to unrepresented debtor(s), other unrepresented parties, and non-ECF Registered Users of the same.

CHAPTER 13 CONTESTED CONFIRMATION CALENDAR

In some cases, the parties will need access to the court to resolve factual or legal issues pertaining to the Chapter 13 case, such as feasibility, disposable income, and eligibility matters. In these situations, a party may set such matters on the Chapter 13 Contested Confirmation Calendar ("Contested Confirmation Calendar"). However, parties may set a matter on the Contested Confirmation Calendar only if these three conditions are satisfied:

- The § 341(a) meeting has been concluded;
- The parties have met and conferred in good faith (in person or by telephone) but cannot resolve their dispute; and
- The parties are ready to submit the dispute for resolution by the court or to have the matter set for trial, evidentiary hearing, or briefing.

To set a matter on the Contested Confirmation Calendar, parties should follow the same rules that apply to any motion in a bankruptcy case as provided by B.L.R. 9014-1(a). Matters may be set for hearing on any available Contested Confirmation Calendar date. Parties are urged to consult the court's website to obtain available dates. To set a matter, the moving party should file and serve a

Notice of Hearing and Certificate of Service on twenty-eight (28) days' notice to parties in interest (generally, debtor(s), debtor(s)' counsel, the Trustee, parties that have objected to the plan, and parties requesting special notice). Responses and objections are governed by B.L.R. 9014-1(c). The court expects that the Contested Confirmation Calendar will consist only of matters ready for judicial resolution or status conference.

In addition, any party setting a matter on the Contested Confirmation Calendar must file a Chapter 13 Status Conference Statement at least fourteen (14) days before an actual hearing. The Chapter 13 Status Conference Statement shall indicate: (1) the unresolved disputed factual and legal issues that require judicial determination; (2) the time estimate for trial or argument and the proposed trial and/or briefing dates; and (3) the date and time of the conference between the parties.

If the noticing party does not timely file a Chapter 13 Status Conference Statement, the matter will be stricken from the Contested Confirmation Calendar and an appropriate notice will be docketed by the court. If a matter is stricken from the Contested Confirmation Calendar, it must be re-noticed for hearing with a new Notice of Hearing, Certificate of Service, and Chapter 13 Status Conference Statement.

When multiple objections to confirmation are pending in a case, one party's Notice of Hearing will place only the noticed objection on the Contested Confirmation Calendar. At the court's discretion, however, any objection filed by the Trustee may be heard at the same time. The court retains discretion pursuant to FED. R. BANKR. P. 7042 to consolidate or sever multiple objections for hearing as appropriate.

CHAPTER 13 MOTIONS

In some cases, the parties will need access to the court to resolve factual or legal issues which are not Chapter 13 plan driven, such as motions to value, fee applications, and claims objections. These matters also should be set on the Chapter 13 Motions Calendar. To set non-plan related matters on the Chapter 13 Motions Calendar, parties should follow the same rules that apply to any motion in a bankruptcy case, under B.L.R. 9014-1(a). Matters may be set for hearing on any available Chapter 13 Motions Calendar date. Parties are urged to consult the court's website to obtain an available date. To set a matter, the moving party should file and serve a Notice of Hearing and Certificate of Service to any party affected by the motion. Responses and objections are governed by B.L.R. 9014-1.

Parties are encouraged to use the "notice and opportunity for hearing" procedure available under B.L.R. 9014-1(b)(3) to obtain an order by default if no objection is raised. If an objection is raised, the parties shall notice it for hearing as indicated above.

TRUSTEE'S MOTIONS TO DISMISS

The court will no longer conduct pre-hearing conferences on objections to confirmation in cases on the TPL simply to monitor the debtor(s)' progress in fulfilling the debtor(s)' obligations. Instead, if outstanding issues are not resolved and deficiencies are not cured on a timely basis, the case may become subject to a Motion to Dismiss by the Trustee. The Trustee will exercise her discretion in bringing such motions, but she is expected to afford the debtor(s) a reasonable period of time to bring a case to confirmation.

Preconfirmation Motions to Dismiss

When making a motion to dismiss, the Trustee is encouraged to use the "notice and opportunity for hearing" procedure available under B.L.R. 9014-1(b)(3). In cases assigned to Judge Weissbrodt, motions to dismiss the chapter 13 cases of pro per debtor(s) should be set for hearing

on the Chapter 13 Motions Calendar. In those cases where the debtor(s)' attorney fails to provide timely responses to the Trustee's requests or otherwise is responsible for unreasonable delay, the Motion to Dismiss may include a request for disgorgement of the attorney's retainer. Responses and objections are governed by B.L.R. 9014-1(c). The court may issue default orders dismissing the case pre-confirmation and dealing with disgorgement as appropriate, per B.L.R. 9014-1(b)(4). If a request for hearing is made, pre-confirmation motions to dismiss should be placed on a Chapter 13 Motions Calendar.

Counsel and debtor(s) should take special notice that the court will carefully review any response to a motion to dismiss brought by the Trustee. To avoid dismissal, debtor(s) must provide detailed information explaining why the Chapter 13 plan has not been confirmed, addressing, in particular, the debtor(s)' efforts to comply with the requirements of the Bankruptcy Code and the Trustee's requests, and why the delay in the case is not prejudicial to creditors under 11 U.S.C. § 1307(c). The debtor(s) should not expect that last-minute compliance will cause the Trustee to withdraw the motion or continue the hearing, or the court to deny the motion or continue the hearing. Untimely opposition to a motion to dismiss may not be considered. Cases may be dismissed on default.

Postconfirmation Motions to Dismiss

Upon the debtor(s)' failure to tender a plan payment to the Trustee (or otherwise comply with any other plan provision) in a timely manner, the Trustee may serve written notice of default on the debtor(s) and debtor(s)' counsel. Within twenty (20) days of the notice of default, the debtor(s) shall: (1) cure the default; (2) meet and confer with the Trustee and enter into an agreement resolving the default on terms acceptable to the Trustee; or (3) file and serve an Application to Modify Plan that proposes terms under which the plan is not in default and provides for plan completion within sixty (60) months of the date the first plan payment was due. Absent timely

compliance by the debtor(s) with any of the foregoing, the court likely will issue a dismissal order upon application of the Trustee supported by a declaration.

A post-confirmation Motion to Dismiss based upon grounds other than a material default by the debtor(s) with respect to a confirmed plan should be filed using the notice and opportunity for a hearing procedure of B.L.R. 9014-1(b)(3). In cases assigned to Judge Weissbrodt, motions to dismiss the chapter 13 cases of proper debtor(s) should be set for hearing on the Chapter 13 Motions Calendar. Absent a timely objection or request for a hearing, the Trustee may request the entry of a post-confirmation dismissal order by default. An actual hearing on a post-confirmation Motion to Dismiss should be noticed for the Chapter 13 Motions Calendar.